IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE A.GOPAL REDDY**

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**WRIT PETITION NO : 18799 of 2004**

Between:

Allani Jayaprada, W/o. A. Mahender,
R/o. 3-4-512/3, Barkathpura, Hyderabad.

**..... PETITIONER**

AND

1 The Municipal Corporation of Hyderabad, rep. by its Commissioner,
Tank Bund Road, Hyderabad.
2 The Chief City Planner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 The District Collector, Hyderabad District,
Nampally Station road, Hyderabad.
4 The Mandal Revenue Officer, Himayathnagar Mandal,
Near APSRTC, Kalyanamandapam, Nizamabad, Hyderabad.

**.....RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ, Order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 1st respondent in rejecting the application dt. 07.06.2004 in File No. 0667/CSC/TP3/04 seeking permission to make constructions vide impugned orders in Lr.No.0667/CSC/TP3/04-3634 Dt. 04.10.2004 as arbitrary, illegal and violative of Article 14 and 21 of the Constitution of India, principles of Natural Justice, consequently set-aside the impugned order issued by the 1st respondent vide Lr. No. 0667/CSC/TP3/04-3634 dt. 04.10.2004.

**Counsel for the Petitioner:MR.D.JAGAN MOHAN REDDY**

**Counsel for the Respondent Nos.1 & 2: MR.G.RAMA RAO, Standing Cousel for**

**MCH**

**Counsel for the Respondent Nos.3&4: GP FOR REVENUE**

**The Court at the stage of admission made the following ORDER:**

The petitioner herein, who purchased the property under four registered sale deeds vide document Nos.945 to 948 for an extent of 280.70 sq.yards in the year 2001, made an application dated 13-06-2003 for obtaining permission to construct a new house in place of existing old house before the first respondent-Commissioner, Municipal Corporation of Hyderabad, Hyderabad, who refused to receive the said application and insisted the petitioner to obtain TSLR certificate from the revenue authorities and accordingly, the petitioner approached the revenue authorities by making an application on 12-06-2003 for issuance of TSLR certificate and when they failed to issue the same, the petitioner filed WP.No.12223 of 2003, in which, the first respondent herein was also a party and the said writ petition was disposed of on 02-07-2003 directing the third respondent-District Collector, Hyderabad, to issue TSLR certificate and accordingly, the same was issued to the petitioner on 22-07-2003. On issuance of the said TSLR certificate, the petitioner submitted an application before the first respondent on 30-08-2003 enclosing TSLR certificate along with the plan, seeking permission for construction of a building in premises bearing No.3-4-875/7/2, 3-4-875-7/3, Barkathpura and the said application was neither considered nor disposed of, against which, the petitioner filed W.P.26062 of 2003 before this Court and the same was disposed of on
16-12-2003 directing the first respondent herein to consider and pass appropriate orders on the application made by the petitioner dated 30-08-2003. In obedience to the above orders, the second respondent-Chief City Planner, Municipal Corporation of Hyderabad, Hyderabad, vide his letter dated 01-06-2004 returned the plans filed by the petitioner without any sanction by refusing the proposals and stated as under:

*“The site in question is abutting to the existing road of 40’-0” on northern side wherein it is proposed to be widened to 100’-0” under 7ZDP due to which 30’-0” strip of portion is getting effected in road widening throughout the frontage of the plot admeasuring area 99.20 sq.mts., but the same is not indicated in the plans by you.*

*In view of the above, the plans are returned without any sanction duly refusing the proposals."*

Subsequently, the petitioner submitted another representation dated 07-06-2004 duly complying the objections raised in the letter dated 01-06-2004 but the first respondent rejected the same by the impugned order dated 04-10-2004. Questioning the same, the present writ petition is filed contending that the impugned order has been passed on the basis of the letter of the fourth respondent-Mandal Revenue Officer, Himayathnagar Mandal, Hyderabad, dated 22-07-2003 and the recommendations of the building committee, which are only advisory in nature, but the said recommendations cannot form the sole basis for taking a decision either for grant or for refusal of the permission and therefore, the impugned order passed by the first respondent refusing the proposals is arbitrary and illegal and liable to be set aside.

In answer to the notice before admission, the first respondent filed counter affidavit stating that the application submitted by the petitioner dated 13-06-2003 was not enclosed with the TSLR certificate but the memorandum issued by the fourth respondent was enclosed. It is admitted that the petitioner made a representation on 07-06-2004 resubmitting the proposals complying the objections raised on the earlier proposal and that the said revised plan was processed and the same was placed before the building committee for consideration and that the building committee after considering the said representation, decided to reject the proposal submitted by the petitioner as the land in question is claimed to be the Government land. Based upon the said decision of the building committee, the impugned order was passed rejecting the resubmitted proposals of the petitioner and accordingly, returned the plans to her. It is further stated that the respondents would reexamine the matter and pass appropriate orders after considering the entire material on record in support of her title.

This Court in **HYDERABAD POTTERIES PRIVATE LIMITED v. COLLECTOR, HYDERABAD DISTRICT AND ANOTHER** categorically held as under:

" The Commissioner is required to make pragmatic

> assessment of the material available on record and decide the question of *prima facie* title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out *prima facie* title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more."

On a perusal of the file, which was produced before the Court by the Standing Counsel appearing for the Municipal Corporation, it is evident as stated by the petitioner in the writ petition that the property was initially purchased by P.Tirumala Reddy from Mr. Khan Bahdur Abdul Khareem Babu Khan under a registered sale deed No.1337, dated 08-06-1956 and thereafter, it was changed several hands and ultimately, the same was purchased by the petitioner. In effect, from the year 1956 onwards, the Government never laid any claim over the property, which was in occupation of the petitioner's vendors vendors. The letter written by the fourth respondent, dated 22-07-2003, indicates that the subject matter of the property was mentioned in the name of Babul Reddy in column No.9, Rathan Singh Paiga was mentioned in column No.10, the name of "G" was mentioned in column No.20 and in column No.21 "R", in column No.22 "C" and in column No.23, it was mentioned as Parvatha Reddy, Pichi Reddy, s/o Babul Reddy.

In view of the said facts, it is observed that the fourth respondent never stated that the property belongs to the Government but the basis, on which, the building committee made their remarks that as per the letter of the fourth respondent, the land, which is under reference belongs to the Government and therefore, the first respondent has accepted the remarks of the building committee and rejected the proposals made by the petitioner.

In view of the same, on petitioner resubmitting the application, the respondents have to consider the same afresh within a period of four weeks from the

date of such resubmission, after providing due opportunity to the petitioner to substantiate that the property is not at all the Government land and the Government cannot claim over the said property, and pass appropriate orders within a period of four weeks thereafter, in the light of the law declared by this Court and uninfluenced by the remarks made by the building committee, which is obviously erroneous as it is no where, the fourth respondent stated that the land belongs to the Government as referred to above.

With the above observations, the writ petition is disposed of. No costs.

11th NOVEMBER, 2004.

Note: furnish c.c. in one week

B/o

Kvni

To

1 The Commissioner,Municipal Corporation of Hyderabad,
Tank Bund Road, Hyderabad.
2 The Chief City Planner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 The District Collector, Hyderabad District,
Nampally Station road, Hyderabad.
4 The Mandal Revenue Officer, Himayathnagar Mandal,
Near APSRTC, Kalyanamandapam, Nizamabad, Hyderabad.

5 Two CCs to the Government Pleader for Revenue, A.P.High Court Buildings, Hyderabad (OUT).

6 Two CD copies.